

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

NATHAN EVAN GARDNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. 5:06-CR-60-HL

Case No. 5:08-CV-90010-HL

ORDER

Currently before the Court is Petitioner Nathan Evan Gardner's Renewed Motion for Certificate of Appealability (Doc. 77).

In its March 17, 2009 order (Doc. 74), the Court denied Petitioner's motion for certificate of appealability from the Court's order accepting the recommendation of United States Magistrate Judge G. Mallon Faircloth that Petitioner's request for 28 U.S.C. § 2255 relief be denied. The Court determined that Petitioner had not made a substantial showing of the denial of a constitutional right so to entitle him to a certificate of appealability.

In his Renewed Motion, Petitioner contends that the Court's referral of his § 2255 motion to the Magistrate Judge for review without Petitioner's consent operated to deny him of his constitutional right to have his motion heard by an Article III judge.

This issue was previously addressed by the Court in an order entered on April 4, 2008 (Doc. 44). The United States Magistrate Act, 28 U.S.C. § 636(B), specifically allows the district court to “designate a magistrate judge...to submit... proposed findings of fact and recommendations for the disposition...of applications for posttrial relief made by individuals convicted of criminal offenses....” 28 U.S.C. § 636(b)(1)(B). The full-time magistrate judges for the Middle District of Georgia are authorized to conduct proceedings and to make recommendations on “[a]ll applications for post-trial relief made by individuals convicted of criminal offenses, including, but not limited to, motions for writs of habeas corpus under 28 U.S.C. § 2241 et. seq., § 2254, and § 2255.” Local Rule 72.1.

Here, the Magistrate Judge made a recommendation to deny Petitioner’s § 2255 motion. The Court then made a *de novo* review of the recommendation and accepted it. The Magistrate Judge was permitted under both 28 U.S.C. § 636 and Local Rule 72.1 to conduct proceedings relating to Petitioner’s motion. The Court was not required to obtain the consent of the parties before referring the § 2255 motion for consideration and recommendation.

Petitioner has not made a substantial showing of the denial of a constitutional right so as to entitle him to a certificate of appealability. 28 U.S.C. § 2253(c)(2). Therefore, Petitioner’s Renewed Motion for Certificate of Appealability (Doc. 77) is **DENIED.**

SO ORDERED, this the 12th day of May, 2009.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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